IN THE HIGH COURT OF JUDICATURE AT BOMBAY

CIVIL APPELLATE JURISDICTION

FIRST APPEAL NO. 176 OF 1992.

M/s.United India Insurance co.
Madras, Divisional office No.7,
P.B.No.1517, Dr.D.N.Road, Fort,
Mumbai 400 001 .... Appellant.

Versus.

1. Asharani Agarwal
   for self and as guardian of
   minor Sunil Agarwal, Vijay
   Agarwal, Anil Agarwal, residing
   at Vishal Apartments, A/503,
   Andheri (East), Sir M.V.Road,
   Bombay 400 069.
2. Shri Vishnu Mahadeo Shrivastav.
3. M/s.Panchal Travels.
4. Jagdish Viothaldas Panchal. .... Respondents.

Smt.P.Contractor for the Appellant.

None for the Respondents.

CORAM : ABHAY S. OKA, J.

Date on which hearing concluded. : 8th June, 2006.

Date on which judgment is pronounced. : 30th June, 2006.

ORAL JUDGMENT.

1. On 7th June 2006, I heard the submissions of the learned Counsel appearing for the Appellant. As none appeared for the Respondents, this Appeal was kept on 8th June 2006 with a view to give one opportunity to the

Respondents. On 8th June 2006 none appeared on behalf of the Respondents. Therefore, further submissions of the learned Counsel for the Appellant were heard and the Judgment was reserved.

2. The Appellant-Insurance Company has taken exception to the Judgment and Award dated 6th February 1991 passed by the learned Member of the Motor Accident Claims Tribunal, Raigad at Alibag in Claim Petition filed by the 1st Respondent under section 110A of the Motor Vehicles Act, 1939 (hereinafter referred to as "the said Act").

3. With a view to appreciate the submissions made by the learned Counsel appearing for the Appellant, it will be necessary to refer to the facts of the case in brief. The deceased Satpal Agarwal was proceeding in a hired car bearing No.MMQ-4839 belonging to the original Opponent No.6 (Respondent No.4 herein) from Bombay to Pune on 25th January 1985. A bus owned by the Maharashtra State Road Transport Corporation coming from opposite direction collided with the motor car within the limits of revenue village Bhakarpada. As a result of the impact of the accident, Satpal suffered injuries on the head and other parts of the body. After few days

he succumbed to the injuries. The Maharashtra State Transport Corporation (MSRTC for short) and the driver of the bus were also impleaded as opponents being opponents Nos.4 and 5 to the claim petition. The contention raised by them was that the accident occurred due to the rash and negligent driving on the part of the driver of the car in which the deceased was travelling. The Appellant also filed written statement and contended that as per the contract of insurance, the maximum liability of the insurance company in respect of each passenger was only Rs.30,000/- and therefore, in the claim filed by the Respondent No.1, the liability of the Appellant-Insurance Company to honour the award which was passed against the insured was only to the extent of Rs.30,000/-.

4. By the impugned Judgment and Award, the learned Member of the Tribunal held that the accident occurred due to the negligence on the part of the driver of the car in which the deceased was travelling. So far as the liability of the Appellant is concerned, the learned Member of the Tribunal held that the liability was to the extent of Rs.1,20,000/- in terms of the policy of insurance. The learned Member of the Tribunal awarded a compensation of Rs.2,30,000/- in favour of the

Respondent No.1 along with interest. It was held that the original Opponents Nos.1 to 3 and 6, i.e. the Respondents Nos.2 to 4 and the Appellant were liable to pay compensation to the Respondent No.1 but the liability of the Appellant was restricted to Rs.1,20,000/-. The finding of the Tribunal is that the Respondent No.4 was the owner of the car and the Respondent No.2 had hired the car which was being driven by the Respondent No.3 at the relevant time.

5. The learned Counsel appearing for the Appellant submitted that the learned Member of the Tribunal has completely misread the terms of the policy. She invited my attention to the endorsement No.1 and 13 attached to and forming part of the policy of insurance. She submitted that on a plain reading of the policy and in particular the endorsement No.13, the liability of the Appellant in respect of one passenger was only to the extent of Rs.30,000/- subject to upper limit of Rs.1,20,000/- in respect of any number of claims in connection with the motor vehicle arising out one cause. She, therefore, submitted that the liability of the Insurance Company will have to be restricted to Rs.30,000/- with proportionate costs and interest thereon.

6. I have considered the submissions of the learned Counsel appearing for the Appellant. The certified copy of the insurance policy which is at Exh.69 specifically states that the limit of liability was subject to endorsement Nos.13, 16, 21, 23, 57 and 66. Endorsement No.13 has also been produced before the trial Court and the same has been marked as Exh.71. The material part of the endorsement No.13 reads thus:

> ". In consideration of an additional premium of Rs.120/- (Rupees one hundred twenty only) and notwithstanding anything to the contrary contained in Section II-1(c) but subject otherwise to the terms exceptions conditions and limitations of this policy **the company will indemnify the Insured against liability at Law for compensation (including Law costs of any Claimant) for death of or bodily injury to any person other than a person excluded under section II 1(b) being carried in or upon or entering or mounting or alighting from the Motor Vehicle but such indemnity is limited to the sum of Rs.30,000/- (Rupees Thirty thousand only) in respect of any one person, and subject to the aforesaid limit in**

> **respect of any one person to Rs.1,20,000/- (Rupees One lakh twenty thousand only) in respect of any number of claims in connection with the Motor Vehicle arising out of one cause."** (Emphasis supplied).

The certificate of insurance shows that extra premium of Rs.120/- was paid by the Respondent No.4 for four passengers at the rate of Rs.30,000/- per passenger. The endorsement No.13 records that in consideration of an additional premium of Rs.120/- the Appellant-company will indemnify the insured against liability at law for compensation for death or bodily injury to any person other than a person excluded under section II 1(b) being carried in or upon or entering or mounting or alighting from the motor vehicle but such indemnity is limited to the sum of rs.30,000/- in respect of any one person and subject to the aforesaid limit in respect of any one person to Rs.1,20,000/- in respect of any number of claims in connection with the motor vehicle arising out of the cause. Thus on a plain reading of the endorsement, it is apparent that the liability of the Appellant to indemnify the insured was limited to Rs.30,000/- in respect of one person. The present Award was in respect of one claim involving only one

passenger. On a plain reading of the terms and conditions of the policy and in particular Endorsement No.13, in the present case the liability of the company was to the extent of Rs.30,000/-. The learned Member of the Tribunal in paragraphs 15 and 16 of the impugned Judgment has committed an error as the relevant endorsement No.13 has not been properly read and appreciated.

7. Now the question which arises is as what should be the final order. It is not clear whether the compensation in terms of the impugned Judgment and Award has been paid by the Appellant to the Respondent No.1. If the amount is already paid, it will be unjust to allow recovery of compensation amount from the Respondent No.1/original claimant. The award made against the Respondent No.4 (original Opponent No.6) is not being disturbed and thus he is liable to pay the entire compensation amount as per the award passed by the Tribunal. Hence the Appellant will be entitled to recover the amount from the Respondent No.4 which is paid by the Appellant to the Respondent No.1 in excess of extent of their liability of Rs.30,000/- together with interest and proportionate costs thereon.

8. Hence the following order is passed:

i) The Appeal is partly allowed. The liability of the Appellant is restricted to the extent of only Rs.30,000/- with interest and proportionate costs as directed by the learned Tribunal. The rest of the Award is confirmed.

ii) If the Respondent No.1 has already received compensation from the Appellant as per the impugned Award, it will be open to the Appellant to recover the excess amount paid from the Respondent No.4 by taking out appropriate proceedings and the Appellant will not be entitled to claim refund of the excess amount from the Respondent No.1.

iii) There will be no order as to costs of this appeal.

iv) The parties to act on an authenticated copy of this order.

Judge.